THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.3088 of 2006

Date of Decision: 29 - 8 - 2006

Gurmel Singh **.....Petitioner**

v.

Financial Commissioner Taxation, Punjab and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.D.S.Gurna, Advocate
for the petitioner.

Mr.G.C.Gupta, DAG, Punjab
for respondents 1 to 4.

Mr.Yogesh Goel, Advocate
for respondents 5 and 6.

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P.S.PATWALIA, J. (Oral)

The petitioner had approached the Assistant Collector Ist Grade – cum- Sub Divisional Magistrate, Payal for entering of mutation in his favour on the basis of a will set up by him. On 23.7.2002 when the case was fixed for evidence, an application was moved by the counsel representing the petitioner which reads as under:-

"Application for the adjournment of the case for today.

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Hon'ble Sir,

I have the honour to submit that I have received Telephonic case today in court premises here at Payal that my real

Brother-in-law (Behnoi) is very much serious in some ailment and his condition is precarious and as such I am required to proceed to Hoshiarpur.

Under this, grave circumstances I am unable to alter the Hon'ble Court after 12.30 P.M. Today.

Your kindself is required to adjourn the case to some other date.

Thanking you Sir,

Dated: 23/7/2002. Submitted by:

Time: 12.30 P.M. G.S.JANJUA,
ADVOCATE
CIVIL COURT,
KHANNA."

It is due to the reason that the counsel's brother-in-law was seriously ill and in precarious condition that the counsel could not appear on 23.7.2002. On that date, the Assistant Collector , however, did not adjourn the matter and asked the petitioner to lead his evidence and examine his witnesses himself. Since the petitioner was a layman, he could not do so. Therefore the petitioner's evidence was closed on 23.7.2002. Against this order the petitioner filed a revision petition before the Divisional Commissioner, Patiala. The Divisional Commissioner was of the opinion that the revision should have been filed before the Collector. However, instead of returning the revision, the Divisional Commissioner dismissed the same as being not maintainable. Against that order of dismissal of the revision, the petitioner approached the Financial Commissioner Taxation, Punjab. There also his further revision was dismissed and the order of the Divisional Commisioner was upheld. It is against that order that the petitioner had approached this Court by way of a writ petition. The writ petition was ordered to be treated as a civil revision and that is how the proceedings are before me.

I am of the opinion that the petitioner has been made to run from pillar to post without any reason. His simple request was for one adjournment on

the ground that condition of his counsel's brother-in-law was precarious. It was that request which was declined. Learned counsel for the petitioner contends that if he is granted an opportunity to lead his evidence, he would do so expeditiously. On the other hand, learned counsel for the respondents states that the very basis of the proceedings before the Assistant Collector no longer exists. He states that a judicial determination has come thereafter in which the alleged will has been held not to be genuine. He further states that in spite of having been granted nine opportunities the petitioner has not led his evidence. Therefore no leniency should be granted to the petitioner by allowing him another opportunity.

After going through the facts of the case and hearing learned counsel for the petitioner, I am of the opinion that even if the petitioner had taken a number of opportunities to lead evidence, his request which was declined on 23.7.2002 was genuine. If his counsel's brother-in-law was seriously ill and condition was precarious, the Assistant Collector should have granted one adjournment to enable the petitioner to complete his evidence. I am of the opinion that at this stage after a period of four years had elapsed, it would not be fair to remand the petitioner to avail his remedy of filing a revision before the Collector after setting aside the orders of the Divisional Commissioner and the Financial Commissioner Taxation , Punjab. I am of the opinion that the interest of justice requires that the order dated 23.7.2002 be set aside and petitioner be allowed one opportunity to to lead his evidence. The petitioner would now lead evidence before the Assistant Collector and proceedings would continue from that stage.

The present revision petition is disposed of in the aforementioned terms.

(P.S.PATWALIA)
JUDGE

August 29, 2006.

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